



Nevada State Board of Medical Examiners

*** MINUTES ***

OPEN SESSION BOARD MEETING

Held in the Conference Room at the Offices of the
Nevada State Board of Medical Examiners
1105 Terminal Way, Suite 301, Reno, Nevada 89502

and videoconferenced to

the Conference Room at the Offices of the Nevada State Board of
Medical Examiners/Nevada State Board of Dental Examiners
6010 S. Rainbow Boulevard, Building A, Suite I, Las Vegas, Nevada 89118

FRIDAY, MARCH 9, 2012 – 8:30 a.m.

Board Members Present

Benjamin J. Rodriguez, M.D., President
Theodore B. Berndt, M.D., Vice President
Valerie J. Clark, BSN, RHU, LUTCF, Secretary-Treasurer
Beverly A. Neyland, M.D.
Michael J. Fischer, M.D.
Donna A. Ruthe
Sue Lowden
Bashir Chowdhry, M.D.
Wayne Hardwick, M.D.

Board Members Absent

None

Mailing Address: P.O. Box 7238 • Reno, Nevada 89510-7238

Physical Address: 1105 Terminal Way, Suite 301 • Reno, Nevada 89502-2144

(775) 688-2559 • Fax (775) 688-2321

E-mail: nsbme@medboard.nv.gov • Website: www.medboard.nv.gov

Staff/Others Present

Douglas C. Cooper, CMBI, Executive Director
Edward O. Cousineau, J.D., Deputy Executive Director
Lyn E. Beggs, J.D., General Counsel
Bradley O. Van Ry, J.D., Deputy General Counsel
Laurie L. Munson, Chief of Administration and Information Systems
Pamela J. Castagnola, CMBI, Chief of Investigations
Lynnette L. Daniels, Chief of Licensing
Donya Jenkins, Finance Manager
Harry B. Ward, J.D., Deputy Attorney General

Agenda Item 1

CALL TO ORDER AND ANNOUNCEMENTS

- Roll Call/Quorum

- *Benjamin J. Rodriguez, M.D., President*

The meeting was called to order by President Benjamin J. Rodriguez, M.D., at 8:30 a.m.

Ms. Beggs took roll call, and all Board members were present. Ms. Beggs announced there was a quorum.

Dr. Rodriguez recognized Chief of Investigations Pamela J. Castagnola, CMBI, for her long-term service of over ten years and presented her with a service award pin.

Agenda Item 2

PUBLIC COMMENT

Dr. Rodriguez asked whether there were any members of the public present who would like to present public comment.

Frankie Sue Del Papa, Esq., former Nevada Attorney General, advised the Board that the Nevada State Health Division and the Nevada Attorney General have put together an initiative having to do with the unlicensed practice of health care, primarily, but not exclusively, in the Latino community. In response to a number of cases of unlicensed practice of medicine, some resulting in death, the Health Division has asked that a task force be formed to reach out to the health community, the law enforcement community, the faith community and any other entity that would have something to contribute to this issue. There has been one meeting of the task force, with two more scheduled, and there may be a legislative committee hearing as early as April because there are a number of legislators interested in the issue. The task force is reviewing statutes in all 50 states. The state of Florida has an unlicensed activity unit within its state health division. The California Medical Board plays a huge role in unlicensed activity in California. The purpose of the task force in Nevada is to define the problem and find resources to fight it. The task force would welcome any type of cooperation/collaboration the Board could offer.

Dr. Rodriguez asked about the timeframe of the task force. Ms. Del Papa stated a draft action plan was due by June 1, which would be circulated for comment, and a final version would be prepared by the end of June.

Discussion ensued regarding the scope and goals of the task force and the possible involvement of the Board.

Mr. Cooper stated that the Board of Medical Examiners was not currently enabled to conduct criminal investigations by statute, so the Board's involvement on that level would require changes in the law and structure and finances of the Board. However, there may be a way for the Board to contribute effectively within the current statutory constraints, and this will be on the agenda for discussion by the Board at its June meeting.

Further discussion ensued regarding the scope of the task force and the manner in which information on this issue will be provided to Board members.

Agenda Item 3

APPROVAL OF MINUTES

- December 2, 2011 Board Meeting – Open/Closed Sessions

Ms. Ruthe moved to approve the Minutes of the December 2, 2011 Board Meeting – Open/Closed Sessions. Dr. Neyland seconded the motion, and it passed unanimously.

Agenda Item 4

CONSIDERATION AND ACTION REGARDING PROPOSED AMENDMENTS TO NEVADA ADMINISTRATIVE CODE CHAPTER 630

- Review of Public Comments on, and Consideration of Adoption of, Proposed Amendment to Nevada Administrative Code Chapter 630, Amending NAC 630.045 to Add Perfusionists to the List of Those to Whom the Regulation Applies
 - Review of Public Comments on, and Consideration of Adoption of, Proposed Amendment to Nevada Administrative Code Chapter 630, Amending NAC 630.187 to Accurately Reflect the Current Title of the Federation of State Medical Board's Publication, *Model Policy for the Use of Controlled Substances for the Treatment of Pain*
 - Review of Public Comments on, and Consideration of Adoption of, Proposed Amendment to Nevada Administrative Code Chapter 630, NAC 630.243 to Add Practitioners of Respiratory Care and Perfusionists to the List of Those to Whom the Regulation Applies
 - Review of Public Comments on, and Consideration of Adoption of, Proposed Amendment to Nevada Administrative Code Chapter 630, Amending NAC 630.270 to Update the Manner by Which Disciplinary Findings and Orders of the Board May Be Served and Adding Practitioners of Respiratory Care and Perfusionists to the List of Those to Whom the Regulation Applies
 - Review of Public Comments on, and Consideration of Adoption of, Proposed Amendment to Nevada Administrative Code Chapter 630, Amending NAC 630.505 to Update Language Related to Credentialing Bodies
 - Consideration of Amendment to Nevada Administrative Code Chapter 630, Amending NAC 630.130 by Removing Language Allowing for the Issuance of a Limited License for Postgraduate Training by the President or Secretary of the Board Between Meetings of the Board
 - Consideration of Amendment to Nevada Administrative Code Chapter 630, Deleting NAC 630.395 in its Entirety, the Content of Which Authorizes the Examination of a Physician Assistant to Test Medical Competence
- *Edward O. Cousineau, J.D., Deputy Executive Director*

Mr. Cousineau explained there were five regulations before the Board which the Board had previously authorized to go forward with the regulatory adoption process. Public workshops and hearings were held in December regarding all five and the only input offered was by Larry Matheis, Nevada State Medical Association, with respect to R062-11, wanting to ensure that the mailings that would be disseminated electronically would make it to the correct parties within hospitals and other facilities. Mr. Cousineau then asked that the five regulations be adopted.

Mrs. Lowden moved that the Board adopt the regulations. Dr. Berndt seconded the motion, and it passed unanimously.

Mr. Cousineau requested the Board's authority to proceed with the adoption process to amend NAC 630.130 and NAC 630.395. The first would repeal section 3 of NAC 630.130, as the language therein is not consistent with Board protocol and practice. The second would repeal NAC 630.395 in its entirety, as it is redundant due to the fact that NAC 630.400 provides the same authority to require physician assistants to undergo an examination for medical competency.

Dr. Chowdhry moved that the Board authorize staff to proceed with the proposed regulations. Mrs. Lowden seconded the motion, and it passed unanimously.

Agenda Item 5

DISCUSSION AND APPROVAL OF MEMORANDUM OF UNDERSTANDING (MOU) WITH SOLUTIONS RECOVERY AS A DIVERSION PROGRAM PROVIDER

- *Douglas C. Cooper, CMBI, Executive Director*

Mr. Cooper explained that Solutions Recovery in Las Vegas provides chronic pain treatment, in-patient residential treatment, out-patient treatment, detox and day treatment, and would like to become a provider for the Board's licensees. He met with staff at their facility in December and they have a top-notch, first-class organization. The Board currently has memorandums of understanding with four other entities to provide diversion and addiction-related behavior counseling and treatment to the Board's licensees. He requested that the Board add Solutions Recovery as a fifth program. The proposed Memorandum of Understanding had been provided to the Board for review prior to the meeting.

Discussion ensued regarding how the programs are vetted and whether the Board is responsible if a participant has a bad experience with one of the programs with which the Board has a memorandum of understanding.

Ms. Ruthe recused herself from the vote, as she is on the board of Solutions Recovery and has been for several years.

Dr. Fischer moved that the Board accept Solutions Recovery as a diversion program provider. Dr. Berndt seconded the motion, and it passed, with Ms. Ruthe abstaining from the vote and all other Board members voting in favor of the motion.

Agenda Item 6

CONSIDERATION OF REQUEST OF STEPHEN DUBIN, M.D. FOR REMOVAL OF CONDITIONS ON HIS MEDICAL LICENSE

- *Stephen Dubin, M.D.*

Dr. Dubin was present in Las Vegas. Ravi Ramanathan, M.D., was present with Dr. Dubin.

Dr. Dubin stated he had submitted to the Board all documentation related to his work over the last year. He completed more than the 50 hours of continuing medical education required by the Board; it was closer to 200 hours.

Dr. Ramanathan stated Dr. Dubin had performed well over the past year. He said his practice is a traditional family practice, and Dr. Dubin saw about 200-plus patients per month. Dr. Ramanathan reviewed Dr. Dubin's notes frequently, and found his documentation thorough and his reasoning sound. Dr. Dubin continued to learn the entire time, and he had no issues with Dr. Dubin's performance.

Dr. Chowdhry thanked Dr. Ramanathan for cooperating with the Board. He stated it is not an easy task to monitor someone for so long and so thoroughly.

Dr. Dubin stated he improved his knowledge during the past year and felt he was back to where he should be.

Dr. Fischer moved that the Board remove the conditions on Dr. Dubin's license. Dr. Chowdhry seconded the motion.

Dr. Berndt asked Dr. Dubin in what type of clinical setting he would be working, and Dr. Dubin stated he planned to continue to work in family practice and perform diagnostic ultrasound, and was still working with Dr. Ramanathan at that time. Dr. Ramanathan indicated he would like Dr. Dubin to stay on with his practice.

A vote was taken on the motion and it passed unanimously.

Agenda Item 7

ADJUDICATION IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. THEODORE POTRUCH, M.D.*, BME CASE NO. 10-4905-1

- *Harry B. Ward, J.D., Deputy Attorney General*

Dr. Potruch was present in Las Vegas. Victor Perry, Esq., was present in Reno as legal counsel for Dr. Potruch.

Mr. Ward provided the Board with procedural instruction regarding the adjudication.

Mr. Perry made an appearance on behalf of Dr. Potruch.

Mr. Ward explained there was one count alleged against Dr. Potruch and described it. He then asked Dr. Rodriguez to chair the adjudication.

Dr. Rodriguez asked whether the adjudicating Board members had read the material related to the matter, and all indicated they had.

Discussion ensued regarding the treatment rendered to the patient by Dr. Potruch and whether it fell below the standard of care.

Ms. Beggs named the adjudicating Board members who were considering the matter.

Further discussion ensued regarding the treatment rendered to the patient by Dr. Potruch.

Ms. Beggs stated that pursuant to Chapter 630 of the Nevada Revised Statutes, the burden of proof in Board adjudications is a preponderance of the evidence.

Further discussion ensued regarding the treatment rendered to the patient by Dr. Potruch and whether it fell below the standard of care.

Mrs. Lowden moved that the Board find Dr. Potruch did not commit malpractice as alleged in the Complaint. Dr. Hardwick seconded the motion, and it failed, with Dr. Rodriguez, Mrs. Lowden and Dr. Hardwick voting in favor of the motion and Dr. Neyland, Ms. Ruthe and Dr. Chowdhry voting against the motion.

Mr. Ward stated the Board could discuss the case further and another motion could be made and a vote taken.

Further discussion ensued regarding the treatment rendered to the patient by Dr. Potruch.

Mrs. Lowden moved that the Board find Dr. Potruch did not commit malpractice as alleged in the Complaint. Dr. Hardwick seconded the motion, and it passed, with Dr. Rodriguez, Dr. Neyland, Mrs. Lowden, Dr. Chowdhry and Dr. Hardwick voting in favor of the motion and Ms. Ruthe voting against the motion.

Mrs. Lowden moved that the Board dismiss the Complaint against Dr. Potruch. Dr. Hardwick seconded the motion, and it passed, with Ms. Ruthe voting against the motion and all other adjudicating Board members voting in favor of the motion.

Agenda Item 8

ADJUDICATION IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. CHARLES GRAHAM, M.D.*, BME CASE NO. 11-7922-1

- *Harry B. Ward, J.D., Deputy Attorney General*

Dr. Graham was not present.

Mr. Ward provided the Board with procedural instruction regarding the adjudication. He then described the charges against Dr. Graham contained in the Complaint. He named the adjudicating Board members who would be considering the matter and asked Dr. Rodriguez to chair the adjudication.

Discussion ensued regarding the allegations contained in the Complaint and the facts of the case.

Mrs. Lowden moved that the Board find Dr. Graham willfully failed to comply with the Orders of the Investigative Committee served on September 16, 2009, which is a violation of the Nevada Revised Statutes, as alleged in the Complaint. Dr. Neyland seconded the motion, and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Dr. Rodriguez moved that Dr. Graham receive a public reprimand and reimburse the Board's costs.

Ms. Castagnola stated the costs incurred in the case were \$5,609.48.

Discussion ensued regarding whether the Board should impose a fine against Dr. Graham.

Dr. Rodriguez amended his motion to include a fine of \$5,000 and that the fine and costs were to be payable within six months. Dr. Chowdhry seconded the amended motion, and it passed, with all adjudicating Board members voting in favor of the motion.

Agenda Item 9

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. GERALD DUNN, M.D.*,
BME CASE NO. II-4343-1

- *Bradley O. Van Ry, J.D., Deputy General Counsel*

Dr. Dunn was not present.

Mr. Van Ry outlined the allegations contained in the Complaint filed against Dr. Dunn and the terms of the proposed settlement agreement.

Dr. Rodriguez named the adjudicating Board members who would be considering the matter.

Ms. Ruthe stated she was abstaining from consideration of the matter as she knew about the case personally and Dr. Dunn is a friend of hers.

Dr. Rodriguez stated he was abstaining from consideration of the matter.

Dr. Chowdhry stated he was abstaining from consideration of the matter because he has known Dr. Dunn for a long time.

Mr. Cousineau and Mr. Ward explained the circumstances that require abstention by a Board member.

Dr. Rodriguez stated that Dr. Dunn treats a member of his family but he believed he could be objective in considering the matter.

Dr. Chowdhry stated his position was similar to that of Dr. Rodriguez.

Ms. Beggs stated for the record that there was one abstention – that of Ms. Ruthe.

Dr. Neyland disclosed that she was in residency with Dr. Dunn and also took care of his children, but felt she could be objective in considering the matter.

Dr. Neyland moved that the Board accept the settlement agreement as proposed. Mrs. Lowden seconded the motion, and it passed, with Ms. Ruthe abstaining from the vote and all other adjudicating Board members voting in favor of the motion.

Agenda Item 10

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. JOCELYN IVIE, M.D.*, BME CASE NO. 11-30615-1

- Bradley O. Van Ry, J.D., Deputy General Counsel

Dr. Ivie was not present.

Dr. Rodriguez named the adjudicating Board members who would be considering the matter.

Mr. Van Ry outlined the allegations contained in the Complaint filed against Dr. Ivie and the terms of the proposed settlement agreement.

Ms. Ruthe moved that the Board accept the settlement agreement as written. Dr. Neyland seconded the motion, and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Agenda Item 11

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. RAKESH NATHU, M.D.*, BME CASE NO. 11-18633-1

- Bradley O. Van Ry, J.D., Deputy General Counsel

Dr. Nathu was not present.

Dr. Rodriguez named the adjudicating Board members who would be considering the matter.

Mr. Van Ry outlined the allegations contained in the Complaint filed against Dr. Nathu and the terms of the proposed settlement agreement.

Ms. Ruthe moved that the Board accept the settlement agreement as written. Dr. Fischer seconded the motion, and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Agenda Item 12

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. LARRY YEE, M.D.*,
BME CASE NO. 11-6816-1

- *Bradley O. Van Ry, J.D., Deputy General Counsel*

Dr. Yee was not present. L. Kristopher Rath, Esq., was present in Las Vegas as legal counsel for Dr. Yee.

Dr. Rodriguez named the adjudicating Board members who would be considering the matter.

Mr. Rath entered his appearance on behalf of Dr. Yee.

Mr. Van Ry outlined the allegations contained in the Complaint filed against Dr. Yee and the terms of the proposed settlement agreement.

Dr. Neyland moved that the Board accept the settlement agreement. Dr. Fischer seconded the motion, and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Agenda Item 13

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. EDWARD OUTLAW, M.D.*,
BME CASE NO. 11-28023-1

- *Bradley O. Van Ry, J.D., Deputy General Counsel*

Dr. Outlaw was not present.

Dr. Rodriguez named the adjudicating Board members who would be considering the matter.

Mr. Van Ry outlined the allegations contained in the Complaint filed against Dr. Outlaw and the terms of the proposed settlement agreement.

Dr. Neyland moved that the Board accept the settlement agreement. Ms. Ruthe seconded the motion, and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Agenda Item 14

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. MICHAEL FISHELL, M.D.*,
BME CASE NO. 12-18246-1

- *Edward O. Cousineau, J.D., Deputy Executive Director*

Dr. Fishell was not present. L. Kristopher Rath, Esq., was present in Las Vegas as legal counsel for Dr. Fishell.

Dr. Rodriguez named the adjudicating Board members who would be considering the matter.

Mr. Cousineau outlined the allegations contained in the Complaint filed against Dr. Fishell and the terms of the proposed settlement agreement.

Mr. Rath entered his appearance on behalf of Dr. Fishell.

Ms. Ruthe moved that the Board accept the settlement agreement as written. Dr. Neyland seconded the motion, and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Agenda Item 15

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. RICHARD HORTON, M.D.*, BME CASE NO. 11-12102-1

- *Edward O. Cousineau, J.D., Deputy Executive Director*

Dr. Horton was not present.

Dr. Rodriguez named the adjudicating Board members who would be considering the matter.

Mr. Cousineau outlined the allegations contained in the Complaint filed against Dr. Horton and the terms of the proposed settlement agreement.

Mrs. Lowden moved that the Board accept the settlement agreement. Dr. Neyland seconded the motion, and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Agenda Item 16

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. LYNN GREENHOUSE, M.D.*, BME CASE NO. 11-7546-1

- *Lyn E. Beggs, J.D., General Counsel*

Dr. Greenhouse was not present.

Dr. Rodriguez named the adjudicating Board members who would be considering the matter.

Ms. Beggs outlined the allegations contained in the Complaint filed against Dr. Greenhouse and the terms of the proposed settlement agreement.

Dr. Rodriguez pointed out a typographical error on page 3 of the settlement agreement with respect to the number of continuing medical education (CME) hours that would be required as part of the settlement. Ms. Beggs stated she would make the correction by interlineation and notify opposing counsel for Dr. Greenhouse, whom she was sure would have no objection.

Mr. Ruthe moved that the Board accept the settlement agreement with the correction regarding the CME hours. Dr. Neyland seconded the motion, and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Agenda Item 17

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. MARYANNE PHILLIPS, M.D.*, BME CASE NO. 11-10032-1

- Lyn E. Beggs, J.D., General Counsel

This item was not discussed at the meeting.

Agenda Item 18

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. NAUMAN JAHANGIR, M.D.*, BME CASE NO. 11-29836-1

- Lyn E. Beggs, J.D., General Counsel

Dr. Jahangir was not present.

Dr. Rodriguez named the adjudicating Board members who would be considering the matter.

Dr. Chowdhry stated he was abstaining from consideration of the matter due to a conflict of interest.

Ms. Beggs outlined the allegations contained in the Complaint filed against Dr. Jahangir and the terms of the proposed settlement agreement.

Dr. Berndt moved that the Board accept the settlement agreement as written. Dr. Fischer seconded the motion, and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Agenda Item 19

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. EDDIE MATHIS, M.D.*, BME CASE NO. 11-8652-1

- Lyn E. Beggs, J.D., General Counsel

Dr. Mathis was not present. Andrea Thorsteinsson, Esq., was present in Las Vegas as legal counsel for Dr. Mathis.

Dr. Rodriguez named the adjudicating Board members who would be considering the matter.

Ms. Thorsteinsson entered her appearance on behalf of Dr. Mathis.

Ms. Beggs outlined the allegations contained in the Complaint filed against Dr. Mathis and the terms of the proposed settlement agreement.

Dr. Fischer moved that the Board accept the settlement agreement. Ms. Clark seconded the motion, and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Agenda Item 20

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. ALAN BURSTEIN, M.D.*, BME CASE NO. 11-12112-1

- *Bradley O. Van Ry, J.D., Deputy General Counsel*

Dr. Burstein was not present.

Dr. Rodriguez named the adjudicating Board members who would be considering the matter.

Mr. Van Ry outlined the allegations contained in the Complaint filed against Dr. Burstein and the terms of the proposed settlement agreement.

Dr. Chowdhry moved that the Board accept the settlement agreement. Dr. Berndt seconded the motion, and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Agenda Item 21

CONSIDERATION OF ACCEPTANCE OF VOLUNTARY SURRENDER OF MEDICAL LICENSE OF SEBASTIAN PAULIN, M.D., LICENSE #6895

- *Lyn E. Beggs, J.D., General Counsel*

Dr. Paulin was not present.

Dr. Rodriguez named the adjudicating Board members who would be considering the matter.

Ms. Beggs explained that this was a request from Dr. Paulin to voluntarily surrender his license while under investigation. The surrender would be reportable to the National Practitioner Data Bank.

Dr. Fischer moved that the Board accept the voluntary surrender of Dr. Paulin's medical license. Ms. Clark seconded the motion, and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Agenda Item 22

CONSIDERATION OF ACCEPTANCE OF VOLUNTARY SURRENDER OF LICENSE OF JAMES BOYLE, RRT, LICENSE #RC1428

- *Bradley O. Van Ry, J.D., Deputy General Counsel*

Mr. Boyle was not present.

Dr. Rodriguez named the adjudicating Board members who would be considering the matter.

Mr. Van Ry explained that this was a request from Mr. Boyle to voluntarily surrender his license to practice respiratory care while under investigation.

Dr. Berndt moved that the Board accept the voluntary surrender of Mr. Boyle's license. Ms. Clark seconded the motion, and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Agenda Item 23

CONSIDERATION OF ACCEPTANCE OF VOLUNTARY SURRENDER OF MEDICAL LICENSE OF BRUCE GINIER, M.D., LICENSE #10573

- *Bradley O. Van Ry, J.D., Deputy General Counsel*

Dr. Ginier was not present.

Dr. Rodriguez named the adjudicating Board members who would be considering the matter.

Mr. Van Ry explained that this was a request from Dr. Ginier to voluntarily surrender his license while under investigation.

Dr. Neyland moved that the Board accept the voluntary surrender of Dr. Ginier's medical license. Ms. Ruthe seconded the motion, and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Agenda Item 24

CONSIDERATION OF REQUEST OF SEAN SU, M.D. FOR MODIFICATION OF THE TERMS OF HIS CURRENTLY EXISTING SETTLEMENT AGREEMENT WITH THE NSBME

- *Sean Su, M.D.*

Dr. Su was not present.

Mr. Cousineau explained that Dr. Su had come before the Board at its last meeting with a request for modification of the terms of a previously agreed to settlement agreement that emanated from March 2010. After some discussion, it was agreed that Dr. Su would withdraw his request at that time and would enter into negotiations with the Investigative Committee, through Mr. Cousineau, to modify the terms of the previous settlement agreement. Mr. Cousineau has prepared an addendum to the settlement agreement, which calls for certain terms to be extended and to be expanded. He then stated for the record that all Board members would be participating in consideration of the matter with the exception of the members of Investigative Committee A – Dr. Berndt, Ms. Clark and Dr. Fischer.

Discussion ensued regarding the terms of the proposed addendum.

Ms. Ruthe moved that the Board approve the addendum to the settlement agreement. Dr. Neyland seconded the motion, and it passed unanimously, with all participating Board members voting in favor of the motion.

Agenda Item 25

REPORTS

- Physician Assistant Advisory Committee
 - Consideration of Request for Appointment of Stephanie Callister, MPA, PA-C, as Replacement Advisory Committee Member
 - *John B. Lanzillotta, PA-C, Advisory Committee Member; Douglas C. Cooper, CMBI, Executive Director*
- Practitioner of Respiratory Care Advisory Committee - *John H. Steinmetz, R.R.T., Advisory Committee Member*
- Investigative Committees
 - Consideration of Cases Recommended for Closure by the Committees
 - *Theodore B. Berndt, M.D., Vice President, Chairman, Investigative Committee A; Benjamin J. Rodriguez, M.D., President, Chairman, Investigative Committee B*
- Investigations Division
 - Status of Investigative Caseload
 - Quarterly Compliance Report
 - *Pamela J. Castagnola, CMBI, Chief of Investigations*
- Nevada State Medical Association Report - *Lawrence P. Matheis, Executive Director, Nevada State Medical Association; Michael J. Fischer, M.D., Board Member*
- Clark County Medical Society Report - *Loretta Moses, Executive Director, Clark County Medical Society; Benjamin J. Rodriguez, M.D., Board President*

Physician Assistant Advisory Committee

- Consideration of Request for Appointment of Stephanie Callister, MPA, PA-C, as Replacement Advisory Committee Member

Mr. Cooper stated that John B. Lanzillotta, PA-C, had been a member of the Physician Assistant Advisory Committee for a very long time and was now stepping down. The Advisory Committee had performed a search and interviewed many people and was recommending Stephanie Callister, MPA, PA-C, as Mr. Lanzillotta's replacement on the Advisory Committee. The Advisory Committee members were currently all from southern Nevada, and since Ms. Callister is from northern Nevada, she would bring representation for the northern part of the state to the Advisory Committee. Additionally, Ms. Callister has been involved with rural communities and small hospitals in the state, so she would also bring that perspective to the Advisory Committee.

Dr. Rodriguez moved that the Board appoint Ms. Callister to the Physician Assistant Advisory Committee. Ms. Ruthe seconded the motion.

Mr. Lanzillotta welcomed Ms. Callister to the Advisory Committee. He stated the Advisory Committee began screening candidates in early January through the Nevada Academy of Physician Assistants. They interviewed Ms. Callister and were all impressed with her knowledge, experience, ability to communicate and strong desire to serve in this position.

A vote was taken on the motion, and it passed unanimously.

Janet Wheble stated she wanted to acknowledge that Mr. Lanzillotta had not only been a member of the Advisory Committee for an extended period of time, but was also one of the first physician assistants in Nevada, has had a distinguished career, and the Advisory Committee really appreciated his input and would miss him greatly.

Dr. Rodriguez thanked Mr. Lanzillotta for his service and read the plaque being presented to Mr. Lanzillotta by the Board in recognition of his service as a member of the Physician Assistant Advisory Committee and to the citizens of the state of Nevada.

Practitioner of Respiratory Care Advisory Committee

John H. Steinmetz, R.R.T., stated the Advisory Committee had been asked to review and comment on an individual who had taken the respiratory care entry-level examination (CRT examination) numerous times before passing. The examination is a national examination given by the National Board for Respiratory Care (NBRC), the approved testing agency for respiratory care throughout the country and the examination this Board accepts for licensure in this state. There are currently no statutes or regulations concerning the number of attempts allowed for passage of the examination. Mr. Steinmetz contacted the NBRC regarding the issue, and they have no limit on the number of times a person can take the entry-level examination and have no recommendations regarding the number of times it should take. The Advisory Committee and the Board's Licensing Division reviewed the case and recommended that particular individual appear before the Board for a determination as to whether the individual possessed the requisite knowledge to practice respiratory care in the state of Nevada.

Discussion ensued regarding whether the Board should consider adopting a regulation that would put constraints on the number of attempts allowed for passage of the examination.

Mr. Steinmetz explained the difference between the CRT examination and the RRT examination.

Discussion ensued regarding whether a correlation had been found between the number of attempts a licensee took before passing the CRT examination and the quality of care subsequently rendered to patients by the licensee. Advisory Committee Member Anthony Everidge stated they have seen no such statistics.

Further discussion ensued regarding whether the Board should consider adopting a regulation regarding the number of attempts allowed for passage of the examination or whether other options should be utilized instead to ensure the competency of an applicant, such as a peer review or a preceptorship-type arrangement.

Investigative Committees

- Consideration of Cases Recommended for Closure by the Committees

Dr. Berndt reported that Investigative Committee A had met and considered 117 cases, authorized the filing of a formal complaint in 6 cases, sent 9 cases out for peer review, requested an appearance in 6 cases, issued 25 letters of concern, reviewed 1 case for compliance and recommended closure of a total of 95 cases, including those cases in which letters of concern were issued.

Dr. Rodriguez reported that Investigative Committee B had met and considered 81 cases, authorized the filing of a formal complaint in 3 cases, sent 7 cases out for peer review, requested an appearance in 5 cases, issued 24 letters of concern, referred 1 case back to investigative staff for further investigation or follow-up, and recommended closure of a total of 65 cases, including those cases in which letters of concern were issued.

Dr. Fischer moved to approve for closure the cases recommended by the Investigative Committees. Mrs. Lowden seconded the motion, and it passed unanimously.

Investigations Division

- Status of Investigative Caseload

Ms. Castagnola reported the current number of open investigative cases was 488 and the number of cases per investigator was 78. There were 31 peer reviews in the field and 1 peer review awaiting assignment.

- Quarterly Compliance Report

Ms. Castagnola reported total costs collected in 2011 were \$145,370.76, total fines collected were \$57,800.00, for a combined total of \$203,170.76. The current outstanding costs owed to the Board were \$215,157.74 and current outstanding fines owed were \$70,650.00, for a combined total of \$285,807.74.

Discussion ensued regarding the percentage of costs the Board recoups through the compliance program. Ms. Jenkins stated staff is currently looking into entering into a contract with an additional collection agency that is more experienced in the legal aspects of collections to increase the percentage, which is already good.

Dr. Rodriguez moved to accept the compliance report. Dr. Fischer seconded the motion, and it passed unanimously.

Nevada State Medical Association Report

Amber Joiner, Director of Governmental Relations for the Nevada State Medical Association (NSMA), advised the Board that Mr. Matheis was unable to attend the meeting due to another commitment. She stated the NSMA will hold a council meeting on March 17, at which they will finalize their legislative strategy for the 2013 session, and will be discussing various policy issues related to Medicare, as well as some of the federal implementation efforts happening at the state level regarding the health insurance exchange and the health information exchange. They will also be considering participation in the HONORreform program, to continue the injection safety campaign in Nevada. Their annual meeting will be held in Henderson, Nevada, on April 27. In May, NSMA will be hosting a third-party payer roundtable in Las Vegas with the purpose of facilitating communication between health insurance plans and providers.

Dr. Fischer suggested the Board consider a legislative change regarding the handling of anonymous complaints. He then suggested that Dr. Hardwick replace him as the Board liaison with the Nevada State Medical Association, and Dr. Hardwick agreed to do so.

Clark County Medical Society Report

Loretta Moses, Executive Director of the Clark County Medical Society (CCMS), reported that the CCMS has retained Mass Media for its public relations and has launched social media on Facebook, Twitter and LinkedIn. Its mini-internship program will be held April 9 through 12, which is a program whereby interns shadow physicians for the day and then meet and discuss what transpired during the day. They are also working on a membership drive campaign for May.

Agenda Item 26

EXECUTIVE STAFF/STAFF REPORTS

- Consideration of Request for Staff Attendance at Educational Meetings
 - *Douglas C. Cooper, CMBI, Executive Director*
- Quarterly Update on Finances - *Donya Jenkins, Finance Manager*
- Informational Items - *Douglas C. Cooper, CMBI, Executive Director*
 - Statutory Audit of the Board by the Federation of State Medical Boards
 - Update Regarding Board Outreach Program and Schedule
 - Update Regarding Attendance at Federation of State Medical Boards 2012 Annual Meeting
 - Update Regarding North Carolina Medical Board Assessment by the Administrators in Medicine, March 12-16, 2012

Consideration of Request for Staff Attendance at Educational Meetings

Mr. Cooper stated there were no requests for staff training at that time.

Quarterly Update on Finances

Ms. Jenkins provided an overview of the information contained in the financial documents provided to the Board for the fourth quarter of 2011. She explained the assets and liabilities on the Balance Sheet and stated the Board is doing well; it is living within its means, controlling its costs and staying within its budget. Ms. Jenkins explained that the Profit and Loss vs. Actual shows how the actual figures compare to what was budgeted for the quarter and for the year. She then highlighted the various sections of the Profit and Loss Budget vs. Actual. She stated the Board's income was better than budget by approximately \$91,000, which represented an 11% overage of what was budgeted for the quarter. She then described the personnel expenses, operating expenses and interest income.

Ms. Clark commended Mr. Cooper and Ms. Jenkins for their astute and conscientious work.

Informational Items

- Statutory Audit of the Board by the Federation of State Medical Boards

Mr. Cooper explained that this audit is mandated by statute, specifically NRS 630.127, and is required every eight years. The Board asked the Legislative Commission to consider accepting the recent audit by the Administrators in Medicine and the Board's financial audits in lieu of this audit, which would save the Board money, but the Legislative Commission opted to go ahead with a separate audit. He stated the objectives of the audit are contained in the statute and described them. The date of the on-site audit visit will be May 7, 8 or 9, or June 12. The final

report will be due to the Legislative Commission by July 15. The Legislative Commission chose the members of the audit team.

Ms. Ruthe asked whether the Board would be provided with the costs of the statutory audit. Mr. Cooper explained that the information was not available at the time the materials were compiled for the Board meeting, but it was roughly \$20,000, and he would provide the actual figure to the Board.

- **Update Regarding Board Outreach Program and Schedule**

Mr. Cooper explained that the Board hired an outside expert to assist staff in rebuilding its outreach program, and the new program is almost complete. The program has been approved for AMA Category I CE credits through the University of Nevada. In addition to the Board's program, there will be a presentation by the Las Vegas Metropolitan Police Department or the Reno Police Department, depending on the location of the presentation, with respect to prescribing pitfalls. Staff has also created a sub-program regarding applying for licensure. Therefore, the Board now has a program for health care providers, a program for groups looking at licensure, a program for law enforcement and other state agencies, and a general program for the public. Two presentation dates have already been set. The first is April 12, at North Vista Hospital in Las Vegas, and the second is May 19, for the Philippine Medical Association of Nevada, also in Las Vegas. The League of Women Voters in Clark County has also contacted the Board with respect to presentation of the program.

Dr. Hardwick asked about the cost of the outreach program. Mr. Cooper stated the Board had spent a couple thousand dollars on it so far, but he would not have a final figure until it was completed. He said he didn't expect it to run over five or six thousand dollars, including the consultation, updates, and future additions. He then outlined other programs on which the expert hired by the Board had consulted. Discussion ensued regarding the basis for the outreach program.

- **Update Regarding Attendance at Federation of State Medical Boards 2012 Annual Meeting**

Mr. Cooper stated that Dr. Rodriguez, Ms. Ruthe and he would be attending the meeting on scholarships from the Federation. The other Board members who were proposed to attend were unable to go, so Lyn Beggs, Lynnette Daniels and Laurie Munson would be attending as well.

- **Update Regarding North Carolina Medical Board Assessment by the Administrators in Medicine, March 12-16, 2012**

Mr. Cooper stated he would be in North Carolina, participating in the Administrators of Medicine audit of the North Carolina Medical Board, March 12 through 16.

Dr. Rodriguez moved to accept the executive staff and financial reports. Dr. Berndt seconded the motion, and it passed unanimously.

Agenda Item 27

LEGAL REPORTS

- Board Litigation Status

- *Lyn E. Beggs, J.D., General Counsel*

Ms. Beggs reported there were 85 open cases in the Legal Division, 17 of which were presented to the Board for decision at this meeting. There were 10 cases in the CMT process, 11 cases awaiting filing of a formal complaint, 33 cases in which a formal complaint had been filed that were pending hearings, 8 miscellaneous matters and 4 petitions for judicial review pending. There were still a few civil matters pending in the district court and one was just argued before the Ninth Circuit Court of Appeals. There were 48 letters of concern approved by the Investigative Committees at their most recent meetings.

Agenda Item 28

LICENSURE RATIFICATION

- Ratification of Licenses Issued, and Reinstatements of Licensure and Changes of Licensure Status Approved Since the December 2, 2011 Board Meeting

Dr. Rodriguez moved that the Board ratify the licenses issued, reinstatements of licensure and changes of licensure status approved since the December 2, 2011 Board Meeting. Dr. Hardwick seconded the motion, and it passed unanimously.

Agenda Item 29

APPEARANCES FOR CONSIDERATION OF ACCEPTANCE OF APPLICATIONS FOR LICENSURE

29(a) Bhaktavathsala Reddy Dandolu, M.D.

Dr. Rodriguez asked Dr. Dandolu whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did.

Dr. Rodriguez moved that the Board go into closed session. Dr. Neyland seconded the motion, and it passed.

Upon returning to open session, Dr. Dandolu stated he was withdrawing his application.

29(b) John Matthew Lynn, CRT

Dr. Rodriguez asked Mr. Lynn whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did.

Dr. Rodriguez moved that the Board go into closed session. Dr. Neyland seconded the motion, and it passed.

Upon returning to open session, Dr. Rodriguez moved that the Board grant Mr. Lynn's application for licensure. Dr. Fischer seconded the motion.

Dr. Rodriguez amended his motion as follows: that the Board grant Mr. Lynn's application for licensure, contingent upon continued participation in, and completion of, his

contract with LifePath Recovery, and that these conditions be memorialized in an order. Ms. Ruthe seconded the amended motion, and it passed unanimously.

29(c) David Robert Golan, M.D.

Dr. Rodriguez asked Dr. Golan whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did not.

Ms. Clark questioned Dr. Golan regarding the fact that he had not practiced clinical medicine since 2008, and about his preceptor plan for re-entry into clinical practice.

Dr. Golan described what he had been doing since 2008, which included spending several weeks shadowing physicians in Nevada beginning January 1, 2012, and seeing patients in a facility in California for approximately three weeks, as he has an active California license.

Ms. Clark asked Dr. Golan about his practice plans if granted a license in Nevada. He stated that he planned to practice in a group practice with several other physicians.

Ms. Clark questioned Dr. Golan regarding his affirmative responses to Questions 1 and 2 on his application for change of status from inactive to active.

Dr. Golan explained the physical condition he has which caused him to leave emergency medicine, but stated the condition would not affect his new practice because he will not be doing the types of procedures that had become problematic for him in emergency medicine.

Ms. Clark moved that the Board grant Dr. Golan's application to change his license status to active. Dr. Fischer seconded the motion, and it passed unanimously.

29(d) Gashaw Demissie Shibeshi, CRT

Dr. Rodriguez asked Mr. Shibeshi whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did not.

Dr. Fischer questioned Mr. Shibeshi regarding the number of attempts it took him before passing the NBRC examination.

Mr. Shibeshi explained why he had difficulty passing the examination. He stated he only read the first part of the questions on the examination before answering and that is why he was unable to pass it. Discussion ensued regarding Mr. Shibeshi's experience with the English language and his experiences in taking the examination.

Discussion ensued regarding whether the Board should require Mr. Shibeshi to take, and successfully pass, a peer review prior to granting him a license.

Dr. Fischer moved that the Board grant Mr. Shibeshi's application for licensure, contingent upon successful passage of a peer review. Ms. Ruthe seconded the motion, and it passed unanimously.

Dr. Rodriguez clarified that Mr. Shibeshi would be responsible for the cost of the peer review.

29(e) Eloisa Barrza Rubio, CRT

Dr. Rodriguez asked Ms. Rubio whether she wanted her application to be considered in closed session, with the public being excluded, and she said that she did.

Dr. Fischer moved that the Board go into closed session. Dr. Clark seconded the motion, and it passed.

Upon returning to open session, Dr. Rodriguez moved that the Board grant Ms. Rubio's application for licensure, contingent upon successful passage of a peer review. Ms. Ruthe seconded the motion, and it passed unanimously.

29(f) Leigh Richards Boeckle, PA-C

Dr. Rodriguez asked Ms. Boeckle whether she wanted her application to be considered in closed session, with the public being excluded, and she said that she did not.

Dr. Rodriguez questioned Ms. Boeckle regarding the fact that she had not practiced clinical medicine since 1998, and about her proposed preceptor plan for re-entry into clinical practice.

Ms. Boeckle explained why she wanted to re-enter clinical practice at this time and described what she had done to prepare to return to practice. She stated she took the PANCE examination in November and had taken CME courses. Additionally, she had shadowed a dermatologist in Las Vegas and was currently shadowing the Medical Director at the Las Vegas Pain Institute, which she had been doing for two weeks.

Discussion ensued regarding Ms. Boeckle's proposed preceptor plan.

Dr. Rodriguez moved that the Board grant Ms. Boeckle's application for licensure with the condition that she be monitored for a year as set forth in her preceptor plan; that all of her charts be reviewed for the first month; that the Board have unfettered access to the medical charts of those patients Ms. Boeckle treats for random chart reviews, as selected by the Board, for the duration of the monitoring period; that Ms. Boeckle can come before the Board at the end of six months with documentation and request removal of the conditions; and that these conditions be memorialized in an order. Dr. Fischer seconded the motion, and it passed unanimously.

29(g) Saime Aksoy, M.D.

Dr. Rodriguez asked Dr. Aksoy whether she wanted her application to be considered in closed session, with the public being excluded, and she said that she did.

Dr. Rodriguez moved that the Board go into closed session. Dr. Neyland seconded the motion, and it passed.

Upon returning to open session, Dr. Neyland moved that the Board grant Dr. Aksoy's application for licensure. Ms. Ruthe seconded the motion, and it passed unanimously.

29(h) Jeffrey Louis Davis, PA-C

Dr. Rodriguez asked Mr. Davis whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did not.

Dr. Berndt questioned Mr. Davis regarding his affirmative responses to Questions 12, 12a and 24 on his application for licensure.

Mr. Davis explained the circumstances surrounding the one case of malpractice against him that resulted in a settlement, and which resulted in an investigation by the Illinois Department of Financial and Professional Regulation.

Dr. Berndt moved that the Board grant Mr. Davis' application for licensure. Ms. Ruthe seconded the motion, and it passed unanimously.

29(i) Razia Sultana Hashmi, M.D.

Dr. Rodriguez asked Dr. Hashmi whether she wanted her application to be considered in closed session, with the public being excluded, and she said that she did not.

Dr. Rodriguez questioned Dr. Hashmi regarding the fact that she had not practiced clinical medicine since January 1997, and why she wanted a license in Nevada.

Dr. Hashmi explained that she works for Anthem Blue Cross and Blue Shield and manages health insurance for members in various states. In order to make decisions regarding Nevada residents she will be required to hold an unlimited medical license in Nevada. Dr. Hashmi explained that her CME is up to date and that she has maintained her Board Certification in Family Medicine and in Geriatric Medicine. She has unrestricted licenses in 11 states; including California, which she just received.

Discussion ensued regarding whether the Board should require Dr. Hashmi to take, and successfully pass, a peer review prior to granting her a license.

Dr. Neyland moved that the Board grant Dr. Hashmi's application for licensure, contingent upon successful passage of a peer review by a Family Practice physician. Ms. Ruthe seconded the motion, and it passed unanimously.

Agenda Item 30

CONSIDERATION OF ACCEPTANCE OF VOLUNTARY SURRENDER OF MEDICAL
LICENSE OF JAMES TINNELL, M.D., LICENSE #2844

- *Bradley O. Van Ry, J.D., Deputy General Counsel*

Dr. Tinnell was not present.

Dr. Rodriguez named the adjudicating Board members who would be considering the matter.

Mr. Van Ry explained that this was a request from Dr. Tinnell to voluntarily surrender his license while under investigation, which is reportable to the National Practitioner Data Bank.

Dr. Chowdhry moved that the Board accept the voluntary surrender of Dr. Tinnell's medical license. Ms. Ruthe seconded the motion, and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Agenda Item 31

MATTERS FOR FUTURE AGENDA

Mr. Cooper stated the following items would be on the agenda of an upcoming Board meeting: a report on the Board's outreach program; a report on the statutory audit by FSMB; consideration of the 2011 Board Annual Report; a report regarding the unlicensed practice of medicine; consideration of upgrading the Board's database system; a request for Investigator Steven Ray to attend the CMBI course to become certified; information on the contract with a new collections agency that will better serve the Board; and consideration of legislative initiatives for the 2013 legislative session. He asked the Board members to provide him with any suggestions for legislative changes prior to the June meeting.

Mr. Cooper stated that Michael Jacobs, M.D., in Las Vegas, has performed several medical reviews for the Board, and he appears to be a very competent and capable medical reviewer. He asked those Board members on the Investigative Committees to provide any feedback they have with respect to his medical reviews so the Board can decide whether to continue to use him as a medical reviewer on certain cases.

Discussion ensued regarding the unlicensed practice of medicine.

Agenda Item 32

PUBLIC COMMENT

Dr. Rodriguez asked whether there were any members of the public present who would like to present public comment, and there were none.

ADJOURNMENT

Dr. Rodriguez adjourned the meeting at 3:36 p.m.

* * * * *